

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Indalex West Inc.
4555 North Star Way
Modesto, California 95356
(Stanislaus County)

ID No. CAD 982 523 896
Respondent.

Docket HWCA 20050771

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Indalex West Inc., a Delaware corporation doing business in California (Respondent) enter into this Consent Order (Order) and agree as follows:

1.1. Site. Respondent generates, handles, treats, and stores hazardous waste at the following site: 4555 North Star Way, Modesto, California 95356 (Site).

1.2. Inspection. The Department inspected the Site on January 11, 2005, which is the basis for this Order.

1.3. The Respondent generates the following hazardous waste: toluene, xylene, used oil, oily solids, caustic rinse waters, paint filters, and sodium hydroxide.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.6. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.7. Admission. Respondent admits the violations described below.

VIOLATIONS ALLEGED

2. The Department alleges the following:

2.1. The Respondent violated California Health and Safety Code, Section 25189.5(d) in that, on or about January 11, 2005, Respondent was treating hazardous waste without a permit or authorization.

2.2. The Respondent violated California Code of Regulations, title 22, section 66261.2 in that, on or about January 11, 2005, Respondent failed to make a hazardous waste determination on corrosive drag out waste allowed to accumulate in a secondary containment.

2.3. The Respondent violated California Code of Regulations, title 22, section 66265.191 in that, on or about January 11, 2005, Respondent failed to make available a hazardous waste tank system assessment for the pH adjustment tank system unit.

SCHEDULE FOR COMPLIANCE

3. Violations described in sections 2.1, 2.2, and 2.3 have been adequately corrected or addressed and no further action is required of Respondent with respect to these violations.

3.1. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Chief
Statewide Compliance Division
State Oversight and Enforcement Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

and

Mr. Jim Simpson
Program Manager
Stanislaus County Environmental Resources
3800 Cornucopia Way, Suite C
Modesto, California 95358

3.2. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.3. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

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3.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.6. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.7. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings,

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including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.8. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.10. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.11. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may,

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prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.2. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.3. Integration. This agreement constitutes the entire agreement between the Parties and may not be amended, supplemented, or modified, except by a writing duly executed by the Department and specifically referencing this document by title and docket number, or as otherwise provided in this Consent Order.

4.4. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any Party of its obligation under this Order.

4.5. Time Periods. "Days" for purposes of this Order means calendar days.

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PENALTY

5.1. Respondent shall pay the Department the total sum of \$32,060.

5.2. Notwithstanding paragraph 5.1, payment in the amount of \$27,060 is due within 30 days from the effective date of the Order if the respondent exercises the option set out in paragraph 5.4. If respondent does not exercise the option under paragraph 5.4, the total amount of \$32,060 is due.

5.3. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

5.4. The penalty shall be reduced by \$5,000 if, and only if, Respondent sends at least two employees, one must be a Supervisor, to the California Compliance School, Modules I-V, and submits to the Department, within 180 days of the effective date of this Consent Order Certificates of Satisfactory Completion thereof.

5.5. In the event that the above Certificates of Satisfactory Completion are not all received by the Department within 180 days of the effective date of this Consent Order, the entire remaining balance of \$5,000 shall then become due and payable.

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EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the Department.

Date May 30, 2006

Original signed by David Manning

Mr. David Manning
Plant Manger, Modesto California
Indalex West Inc.

Date June 2, 2006

Original signed by Charles A. McLaughlin for Sangat Kals

Sangat Kals, Ph.D., Section Chief
State Oversight and Enforcement Branch
Department of Toxic Substances Control